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NOTES

ON THE

CONSTITUTION

OF THE

UNITED STATES,

WITH

EXPOSITIONS

Of the Most Eminent Statesmen and Jurists.

Historical and Explanatory Notes

ON EVERY ARTICLE.

BY C. CHAUNCEY BURR,

Author of the "History of the Union and the Constitution."



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J. F. FEEKS,

**In the Clerk's Office of the District Court of the United States, for the Southern
District of New-York.**

NOTE TO THE READER.

As these Notes are designed especially for the benefit of the Million, they have been left as free as possible of all technical phrases. Brevity and clearness have been the chief points aimed at, after the prime purpose of giving a correct interpretation of such parts of the Constitution, as have a direct bearing upon the issues now before our country. The necessary brevity of the work does not permit the introduction of a larger number of references. Nor would the introduction of a great many references comport with the object of the author, which is to give an explanation that commends itself to the reason and intelligence of the reader, by a direct analysis of the text of the Constitution itself. It is designed to help the reader to draw correct conclusions for himself—to form opinions of his own, so that he may be able to successfully combat the errors and delusions which are everywhere so prevalent in relation to the nature and powers of the Federal Government.

II.

It will be seen that all of the text of the Constitution is in the largest type.

The author has mostly quoted Chief Justice Story, because of his great reputation as a jurist, and because he was a Federalist, and never conceded a point in favor of the democratic interpretation of the Constitution, when he was not forced to do so by the incontrovertible meaning of the text.

The Reports of Dallas and Cranch, occasionally referred to, are Reports of the decisions of the Supreme Court of the United States.

NOTES

ON THE

CONSTITUTION.



PREAMBLE.

WE the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America.

NOTE.

This Preamble fully sets forth the reasons which led our fathers to establish the Union, and affords a perfect key to the true interpretation of the Constitution.

The term "*We the People of the United States*," at once defines the nature of the Federal government—it is a government of *States*, and not of the *People*, as a consolidated body. This preamble recognizes *State individuality*, in opposition to the idea of the *consolidation* of the States into one vast National body. It was no part of the design of our fathers to form such a consolidated government. The government established by this Constitution is not of *consolidated States*, but of "*United States*." *United* and *consolidated*, are words of very different import. Had the design been to form a government of one consolidated people, the Preamble would have read *We the People of America*. But there is no such body politic known as, *The People of America*. The name of our government is the "*United States*"—that is, as the French has it—" *Les Etas Unis*"—the *States United*. The term, "*We the People*," in this preamble, is of precisely the same import as the phrase "*the people of the several States*" in the second section of the first Article of this Constitution. In the Constitutional Convention of Virginia, Patrick Henry, referring to the phraseology of this Preamble, exclaimed—"What right had the framers of the Constitution to say "*We the people*," instead of "*We the States*?" Mr. Madison replied—"Who are the parties to the government? The people; but not the people as composing *one great body*; but the people as composing "*thirteen sovereignties*." This Preamble sets forth the object of the Constitution to be "to form a more perfect Union." The idea of *union* and not *consolidation* is still affirmed. We hear a great deal, at the present time, about the "*National Government*," the "Na-

tional forces," &c. ; but no such language is found in the Constitution. On the contrary, the word "*National*" was designedly banished from that instrument, as implying a principle inimical to the purposes of the convention. In the first draft of a Constitution introduced to the Convention by Governor Randolph, the opening resolution declared, "That it is the opinion of this committee, that a *national* government ought to be formed." When this came up for discussion, Judge Ellsworth, of the State of Connecticut, said, "I propose, and therefore move, to expunge the word *national* from the first resolve, and place in the room of it, "*government of the United States*." This passed unanimously, which voted this now popular word, "*national*," out of the Constitution, as something contraband of the nature of the government which they were endeavoring to establish. In the debate on this matter, Mr. Lansing of the State of New York, said, "I am already of the opinion, that I am not authorized to accede to a system which will annihilate the State governments. When many of the states are so tenacious of their rights on this point, can we expect that thirteen States will surrender their governments up to a *national* plan." Those who advocated the "*national* plan," were in such a small minority in the convention, that they at once abandoned the idea, and gracefully yielded to the plan of a government of co-equal, sovereign and independent States.

This preamble further sets forth the object of the constitution to be, to "ensure domestic tranquility, and to secure the blessings of liberty to ourselves and our posterity." This then was the object of the

formation of the Union. As long as it secures to the States these great and inestimable blessings of "domestic tranquility" and "liberty," every party to the compact is bound faithfully to support it. But whenever it becomes destructive of the objects for which it was formed, it is clearly the right of the States whose "domestic tranquility" and "liberty" may be endangered to assert their original sovereign powers for their own protection and happiness. The position laid down by Daniel Webster that "a compact broken on one part is broken on all" is one that no sane man disputes. This ground is fully affirmed in the following clause of the Resolutions of "'98 : "The *States*, then, being the parties to the Constitutional compact, and in their *sovereign* capacity, it follows of necessity that there can be no tribunal above their authority, to decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition." It has sometimes been denied that the States adopted the Constitution in the capacity of sovereign bodies, because it was done in conventions of *the people*. Even Chief Justice Story seems to have labored under a delusion growing out of this fact. It is true the constitution was ratified by *the people* ; but not by the people of the whole United States as *one body*, but by the people of the "several States," assembled each in its distinct and separate statehood, to ratify or reject the constitution as it pleased in its own sovereign powers. Had the people designed to adopt a constitution, in their collective capacity as one great nation, there could have been no calling of separate state conventions, but delegates would have been chosen from all the states to one general convention, for the purpose of deliberating upon the question of adoption or rejection.

ARTICLE I.

SECTION 1.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

NOTE.

“Powers herein GRANTED.” All the legislative powers of the Federal Government are declared to be of the nature of a “*grant*.” The grantors are the States, and the grantee, or federal government, is therefore the dependent agent of these sovereign bodies. The federal government possesses only such powers as were “*granted*” by its framers and masters, the States. It is not a party to the compact, but is the general agent for administering certain offices resulting from the compact.

SECTION 2.

1. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

NOTE.

Thus the power of Congress represents not a *consolidated people*, but the people of the "*several States*." It represents the sovereignty and independence of the States. If the States should refuse to elect members of Congress the federal government has no remedy against such action on the part of the States. Though its own existence would be put in jeopardy, it has no remedy. It is a matter in which the sovereignty of the States is perfect. Congress has no power to order an election in a non-complying State. Thus in the first article of the constitution did "the several States" reserve to themselves the power to annihilate Congress, if a majority of them so please. It was never the intention of the States to make the Congress their masters. All the powers they *granted* were for their own benefits; and they retained the power to even annihilate Congress if it should ever so suit their sovereign pleasure.

2. No person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

3. Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to

their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When Vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

5. The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment.

NOTE.

While the sole power of impeachment is given to the House of Representatives, the power to try all impeachments is in the Senate. The powers of the House in this particular are similar to those of a grand jury, whose business it is to find the bill of indictment, while the Senate is the high court to try the case. Those who are liable to impeachment are the President, Vice President and all civil officers of the United States. [See Article II. Section 4.] Thus the "several states" have reserved to themselves, through the representatives of their sovereignty, the right to remove the President and all the officers of the federal government from office, if they prove unfaithful to the duties entrusted to them. This right of impeachment of all the officers of the federal government is the very highest assertion of *State sovereignty*.

SECTION 3.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years ; and each Senator shall have one vote.

NOTE.

The Senate, the highest branch of the federal legislature, is the creature of the "several States," and represents their sovereignty—their absolute sovereignty ; for there is no power in the federal govern-

ment to compel the State legislatures to elect U. S. Senators. Suppose a majority of the States should refuse to elect Senators, what would become of the federal government? It would come to a sudden end. The legislative branch would be swept out of existence, leaving the executive and the federal branches without legal powers to proceed. The administration of the federal government must in such an event cease. The existence of the Federal Government would vanish from the face of the earth, leaving the "several states" precisely as they were before the adoption of the federal constitution.

The number of Senators—two from each State—is a further proof of the determination of the States not to hazard their sovereignty. By this Constitution the State of Rhode Island, which has a population less than that of a single county of the State of New York has the same power in the Federal Senate that the largest State in the Union possesses. The sovereignty of a small State is as absolute as that of a large one—and not one of the small States would have adopted the constitution, had it denied them perfect equality, in the chief branch of the federal legislature. The federal Senate represents the State as *sovereignties*, and not the people at large, that is the reason why a small State has the same number of Senators that the largest have.

2. Immediately after they shall be assembled in consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first

Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointment until the next Meeting of the Legislature, which shall then fill such Vacancies.

3. No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

4. The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

5. The Senate shall choose their other Officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office of President of the United States.

6. The Senate shall have the sole Power to try all Impeachments. When sitting for that

Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside : And no Person shall be convicted without the Concurrence of two thirds of the Members present.

7. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and Disqualifications to hold and enjoy any Office of Honor, Trust or Profit under the United States : but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law

NOTE.

Although the vote of impeachment by the Senate can go no further than to remove the *impeached* from office, he is liable to be tried by the civil courts, or may be fined, imprisoned or hanged, according to the nature of his offence. The President is just as liable to arrest, if he breaks the laws, as the poorest vagrant in the land. Any man breaking the laws, acting by his authority, as a general, United States marshal, or provost marshal, is just as liable to arrest and punishment as though he committed the lawless deeds of his own motion. By executing the sentence of a court-martial, if it proves to be a violation of the laws of the land, the officer makes himself liable. The sentence of the court is no protection to the officer. See Cranch's Reports of the Supreme Court, Vol. 1—333.

SECTION 4.

1. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION 5.

1. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

2. Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

3. Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy ; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

4. Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three Days, nor to any other Place than to that in which the two Houses shall be sitting.

SECTION 6.

1. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same ; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

2. No Senator or Representative shall, during

the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time ; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

NOTE.

Of the last clause of this sixth section Chief Justice Story says :—"The object of these provisions is sufficiently manifest. It is, to preserve the legislature against undue influence, and direct corruption on the part of the Executive. The great securities for society—those, on which it must forever rest in a free government—are, responsibility to the people through elections, and personal character, and purity of principle."

The members of the Federal Congress are the agents or servants of the people of the States, and so careful were the framers of the Constitution to provide for keeping them so, that the instrument bars senators or representatives from accepting any office under the authority of the United States, and forbids a person holding office under the Federal Government to be elected a senator or representative. Chief Justice Story in a further comment on this clause says :—"It is doubtless founded in a deference to State jealousy, and a sincere desire to obviate the fears, real or imaginary, that the General Government

would obtain an undue preference over the State Government." The Federal Congress since the election of Mr. Lincoln has entirely disregarded the spirit and intent of this clause of the Constitution, a majority of them have been the guilty tools of Executive usurpation and despotism. In violation of the Constitution they have passed acts clothing the President with monarchial and despotic powers. They have passed acts designed to protect the President from just punishment for violations of law; and have appropriated the public funds to aid him in destroying the purity of elections in the States. In a word they have ceased to be the representatives or servants of the States, and have become the representatives or pliant tools of the Federal Executive.

SECTION 7.

1. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

NOTE.

This is the rule in the English Parliament, where all bills appropriating money originate in the House of Commons. The reason is that all appropriations of the people's money "should originate with their immediate representatives."

This was no doubt the thought of the framers of our Constitution. But the spirit of this clause has

been violated during the whole time of the present administration. The bills for raising revenue have been conceived by the President or his Cabinet ; and have then been shaped in caucuses of the Senate and House of Representatives—all acting together as if conspiring against the sovereign dignity of the States, and the pockets of the people whom they were sent to represent.

2. Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States ; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays ex-

cepted) after it shall have been presented to him, the Same shall be a law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

3. Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be re-passed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION 8.

1. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

NOTE.

The whole of this eighth section is devoted to the

powers of Congress. In studying these powers we are to bear in mind that Congress derives all its powers from the Constitution. It is therefore a body of limited powers. An act of Congress made contrary to the restrictions of the Constitution is absolutely void—is not a law. See Dallas' Reports of the Supreme Court III:399, and I Cranch, 176.

The opening clause of this eighth section gives Congress the power to collect taxes, duties and imposts, to pay the debts and provide for the common defence, &c., of the United States. It expressly names for what purposes Congress may tax the people. It can collect taxes and duties for no other purpose, than for the "common defense and general welfare." The last and the present Congress have taxed the people to buy negroes of the border States—to teach negroes to read and write on the coast of North and South Carolina—to give negroes transportation from the South to the North—to build negroes' houses, and to feed and clothe them—all of which is a violation of the Constitution. Congress has no power to tax the people for such purposes. Surely no one will contend that these are among the necessary and legitimate expenses of the government of the United States. If Congress has a right to tax the people for such purposes, there can be no limit to its powers. Chief Justice Story says this clause means "a limitation or qualification of the power of taxation; so that no taxes can be laid by Congress, except to pay the debts, and to provide for the common defence and general welfare." To *pay the debts* means the ordinary and legitimate expenses of government. The distinguished jurist above quoted fur-

ther says—"The power of taxation is not unlimited in its character. The taxes levied must be (as we have seen) either to pay the public debts, or to provide for the common defense and general welfare of the United States."

This clause of the constitution also requires that "all the duties, imposts and excises shall be uniform throughout the United States." On this Chief Justice Story says—"The reason of the latter rule is, to prevent Congress from giving any undue preference to the pursuits or interests of one state over those of another. It might otherwise happen, that the agriculture, commerce, or manufactures of one state, might be built up on the ruins of the interests of another." This is what Congress has done, especially since the accession of the Republican party to power. The manufacturing states of the East are getting rich to the detriment of the agricultural states of the West. The Congressional legislation which has produced this result, is clearly a subversion of the intent of this clause of the constitution.

2. To borrow Money on the credit of the United States ;

3. To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

NOTE.

Congress is authorized to borrow money on the

credit of the United States for the purpose of paying the public debt and for the general welfare, and for no other purpose. The right to pay the public debt carries with it the power to raise money for that purpose. And for such a purpose Congress may borrow money on the credit of the United States. But Congress has no right to borrow money on the credit of the United States, to purchase, feed, clothe, educate, or otherwise provide especially for negroes, to transport soldiers home to vote, &c.

The power "*to regulate commerce*" is to be exercised only in agreement with the objects for which taxes may be collected or money borrowed, viz : to pay the public debt, and to provide for the common defense and general welfare. It has been a disputed question, whether Congress has power to lay duties on imports for the purpose of *encouraging manufactures*. It should be noticed that all the powers here given to Congress touching this matter are clearly for the purpose of *revenue* and for no other purpose. And these powers are all confined to the *general welfare*. Legislation for a class or a section is forbidden in this instrument. The Congress have no more right to impose taxes for the encouragement of manufactures, than they have to do so for the encouragement of meeting houses or any other local or private interest.

4. To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States ;

5. To coin Money, regulate the Value thereof,

and of foreign Coin, and fix the Standard of Weights and Measures.'

NOTE.

To coin money admits of no doubtful signification. As the term is adopted without explanation, it must be understood in its ordinary acceptation.

To coin money means to *stamp coin*. By no construction possible can it be made to signify to *print paper*. If Congress has any Constitutional power to print paper to occupy the place of *coin* as *money* it must be sought for in the above clause.

The common sense of any man teaches him that paper is not *coin*, and it is difficult to imagine how it is possible for any man to infer the right of Congress to print a paper currency from the powers granted in this clause of the Constitution. It is impossible to believe that Congress supposed it possessed any such right when it passed the bill, or that the judges, who have pronounced the act Constitutional are honest. One judge who gave such a decision based his opinion upon the words to "regulate the *value thereof*." But the clause reads that Congress shall have power to "coin money, regulate the value thereof—" *i. e.* to regulate the value of *coined money*. The language admits of no doubt. Greenbacks are not, in the meaning of the Constitution, *money*, because Congress has no power delegated to it, to make such a currency. A greenback is no more than an unsecured *promise* to pay. It is the *promise* of a party which is already bankrupt. It was never the intention of the framers

of the Constitution to expose the people of these States to the ruin liable to follow such a rotten system.

6. To provide for the Punishment of counterfeiting the Securities and current Coin of the United States ;

7. To establish Post Offices and Post Roads.

NOTE.

The right to establish *post roads* must be understood to apply to territories of the United States, or to such places as belong to the United States. Over the soil of the States the United States has no jurisdiction, to allow it to construct public roads without the consent of the State. Without the consent of the State the United States cannot locate a post office, light-house, custom-house, or hospital on the soil of a State. The right of *eminent domain* is with the State. The power of the States over all the territory belonging to them is absolute. Congress cannot locate a post road or any other road through a state unless by the grant of the State. In 1808 the United States wanted to build a light house at Sandy Point, N. Y. The parties owning the land refused to sell, and the United States, admitting its inability to take the land even for the indispensable purpose of building a light-house, applied to the State of New York, which like all the States, has sovereign jurisdiction over all its territory. And for the relief of the United States, the State of New York passed a special act, April 1st,

1808, to the effect that the authorities of the State should purchase the said land at Sandy Point of its owners; and, in case they still refused to sell, the state authorities were authorized to issue a writ *ad quod damnum*,* to take the land in the name of the States paying the owners full and fair price for the same.

The last clause of this act sets forth that the state authority should be "empowered to convey and grant the same to the United States: Provided, That the consideration money and costs are paid to him by or on behalf of the United States." In the 1st Vol. of the Laws of the State of New York, are found several acts granting land to the United States for public purposes. The United States Government cannot use a foot of the soil of any state for any purpose whatever, without the permission of the State. Light houses, Custom houses, Post Offices and Hospitals, are indispensable things; but the Federal Government cannot build these anywhere without first obtaining permission of the State, on whose soil it is designed to construct the public works. The right of jurisdiction over the soil of the States, is not among the powers granted to the Federal Government in the Constitution. Therefore, the bill now before Congress to establish a military or some sort of United States *road*, through the State of New Jersey, if passed will be plainly unconstitutional, without the consent of the State of New Jersey. Any party attempting to carry out the objects of such a bill, will

*The literal meaning is *to that injury*. The force of the writ was for the State to assume possession, and call a jury to assess the value of the land, or the pecuniary *injury* done to the parties owning it, by assuming it for the public.

be liable to arrest and restraint by the authorities of the State whenever and wherever they shall make such an attempt. The powers of Congress to make such roads, even with the consent of the State, has been denied by the very highest authority ever since the foundation of the Government. Jefferson in his message of Dec. 2d, 1806, declared that Congress has no such powers. Madison in his message of Dec. 3d, 1816, did the same. Jackson did the same in 1830, and President Polk in 1846. Chancellor Kent says, "Congress, however, claims the power to lay out, construct and improve post roads, with the assent of the States through which they pass. They also claim the power to open and impose military roads on like terms (*i. e.* on consent of the States) and on leaving in all these cases the jurisdictional right in the respective States." The tendency of Congress has been more or less to transcend its constitutional powers, but it never claimed that it could establish a road of any description through a State, without the consent of the State.

8. To promote the progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries ;

9. To constitute Tribunals inferior to the Supreme Court ;

10. To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations ;

11. To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water.

NOTE.

The power to declare war is in Congress alone. The President has no more right to declare war, or to take any step which amounts to a declaration of war, than any private individual has. To give such a power to the President would be to commit the liberties and rights of the people to the caprice, resentment, or recklessness of one man. It might indeed suspend the very existence of the Republic upon the discretion of a single individual. Hence all these powers of war, etc., are in the people of "the several States" through their representatives in Congress.

12. To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years.

NOTE.

As only Congress can declare war, it alone has the power to raise armies, or to order the raising of armies, and to appropriate money for their support. And, lest even this power might be recklessly or viciously used to the detriment of the States, or of the general welfare, Congress is forbidden to appropriate money for the maintenance of an army for a longer period than two years at a time. So that every two

years, at furthest, the question of continuing an army in existence comes regularly before the representatives of the people in Congress. If no appropriation were made the army would be necessarily disbanded. During the progress of the Mexican war the opposition to the Democratic party in Congress made a strenuous effort to defeat an appropriation for the support of the army then in Mexico ; which, had they succeeded, would have disbanded our army in the midst of a hostile country, in mid winter, leaving our soldiers without food, and without even the means of defending themselves, or of getting home again. Mr. Lincoln, then in Congress, was one of the leaders of this barbarous scheme, to cut off the supplies of an army while it was in an enemy's country two thousand miles from home ; and which, if successful, must have resulted in the massacre, or death, from privation, of nearly all our soldiers.

13. To provide and maintain a Navy ;

14. To make Rules for the Government and Regulation of the land and naval Forces ;

15. To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions.

NOTE.

The militia can be lawfully called into the service of the United States for but three purposes : 1st, To execute the laws of the Union. 2d, To suppress in-

surrections. 3d, To repel invasions. It will, we think, be difficult to find in this clause of the Constitution any warrant for the President to call upon the State militia, to aid in the prosecution of the war he is now waging upon the Southern States, for the following reasons :

1. The object of the war is not "*to execute the laws of the Union.*" It is to abolish slavery, to conquer, subjugate and destroy States, and to obtain possession of the property of the Southern people. The *laws of the Union* are the Constitution, and laws enacted in pursuance thereof. As those who are conducting the war tell us that the Union as it was, and the Constitution as it is, shall not, and ought not to be preserved, *i. e.* the laws of the Union are not to be respected, it is certain that there is no authority for calling on the militia to assist in the war. Any Governor who permits the militia of his State to be used by the United States for any other purpose than the enforcement of the *laws of the Union* disregards his oath of office, and may be dealt with accordingly by the legislature of his State.

2. It is also confessed that the war is not prosecuted to suppress insurrections. To suppress an insurrection would be to enforce the laws of the Union or of the States—in a word, to faithfully follow and enforce the Constitution. The use of the militia for any other purpose, is itself equal in crime to an insurrection. It should be considered that States *as States* cannot commit the act of insurrection; because they are not *subjects*. They are sovereign bodies. All the powers of the Federal Government are only such as the "several" sovereign States delegated to

it. The Federal Government is not even a party to the compact. The *States* are the parties, and the only parties to the compact, and the Federal Government is the recipient of certain defined powers resulting from that compact. To this Federal Government or General Agent, the States never delegated the right to make war upon them for any purpose whatever, "not even," in the language of Mr. Madison, "for unconstitutional acts. *Secession*, whatever it may be, is not an *insurrection* within the meaning of the Constitution. *Individuals*, not *States*, may commit the act of *insurrection*. In every Northern State there have been repeated *insurrections* against the provisions of the Constitution and the acts of Congress, in relation to the rendition of fugitive slaves. Nearly every Northern State passed laws to resist this fugitive slave clause of the Constitution and the acts of Congress made in pursuance thereof; but it was not held that the States so nulifying the Constitution and the laws of Congress, were in *insurrection*. The action of these Northern States was *Nulification*; but neither *Nulification* nor *Secession* is an *insurrection* within the meaning of the Constitution."

3. It is not contended that the object of this war is to *repel invasion*. In his comments on this clause of the Constitution, Judge Story, says—"It is made an imperative duty of the general Government, on the application of the Legislature or executive of a State, to aid in the suppression of such domestic insurrections; as well as to protect the State from foreign invasions." It is not the duty or the right of the President to send a military force into a State either to quell an insurrection, or to resist an invasion, until

called upon by the Executive or Legislature of the State for such assistance. The clause is not to be construed to mean so much the *right* as the *duty* of the Federal Government to aid the State. The object of the provision is the benefit, peace and inviolate sovereignty of the States, and not the aggrandizement and power of the Federal Government. It is bound to go, when asked, and only when asked, to the assistance of the State. Chief Justice Story, further says,—in answering the objection that there be danger that the Federal Government might be tempted, while its military force is in a State, to attempt alterations in the State Governments without the concurrence of the States themselves—“It may be answered, that if the General Government should interpose, by virtue of this Constitutional authority, it will, of course, be bound to pursue the authority. But the authority extends no further than to a *guarantee* of a republican form of Government, which supposes a pre-existing Government of the form, which is to be guarantied. As long, therefore, as the existing republican forms are continued by the States, they are guarantied by the Federal Constitution. Whenever the States may choose to substitute other republican forms, they have a right to do so, and to claim the federal guarantee for the latter. The only restriction imposed upon them is, that they shall not exchange republican for anti-republican Constitutions.

16. To provide for organizing, arming, and disciplining, the Militia, and for governing such

Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the Discipline prescribed by Congress.

NOTE.

The militia is strictly a State institution. It is the highest possible expression of State sovereignty. When called out by the Federal Government for certain purposes definitely limited, it still retains all its characteristics of a State institution. The States have reserved to themselves the appointment of the officers and the training of the militia. The object of this provision is to preserve the State character of the militia—to keep it as representative of State sovereignty, even while it is but for a specified service under the direction of the United States.

17. To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings:—
And

18. To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

NOTE.

In this clause the right of exclusive legislation over the District of Columbia is given to Congress. By which, however, Congress does not receive power to pass laws for the destruction of vested rights, or the seizing of the property of private individuals in said territory. No such powers belong to legislation. The clause sets forth that Congress derives its powers in such cases through purchase made "by the consent of the legislature of the State in which the same shall be," &c. Of course it was no part of the bargain that Congress should have power to destroy, or in any way molest the vested rights, or the property institutions of the citizens of the States residing upon territory so purchased. No man is mad enough to seriously assert such an absurdity. Thus it has always been held, not only by the Supreme Court, but by Congress and by the Executive, that it was not in the right of Congress to abolish slavery in the District of Columbia. The right of *exclusive legislation* was not supposed to imply the right to disturb the social and property foundations of the community which existed at the time of the purchase. Although

the last Congress did all this by an act abolishing slavery in the District of Columbia, we are not to suppose that they imagined they had really any right to pass such an act. They violated the Constitution and transcended their powers in many instances besides this one. Almost all the acts of Congress for the last three years have been unconstitutional and revolutionary in their character. If the Union is ever restored all these acts will have to be repealed because they *are* unconstitutional.

SECTION 9.

1. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten dollars for each Person.

NOTE.

By the "importation of *such persons*," &c., is meant *slaves*. By this clause of the Constitution the Federal Government was prohibited from interfering with the foreign slave trade before the year 1808. But it will be noticed that the clause does not say that the slave trade should cease at that time. It provides that it shall not cease before 1808, and leaves it an

open question whether it shall continue after that time or not. There is nothing in the Constitution that would not allow it to continue for all time.

This clause allowed Congress to raise a *revenue* from the slave trade, by imposing a duty of ten dollars on every slave imported.

2. The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

NOTE.

The meaning of *habeas corpus* is to *have or to hold the body*, literally, *have you the body*. It is called the "Writ of Liberty," because its action is to hold the body of a party seized until a proper Court shall decide whether he is *legally* seized or not. The effect of the writ is not to pronounce upon the guilt or innocence of the party—is not to shield him from a full and fair trial—but is simply to determine whether his arrest is made according to law. It commands the officer holding the person of another to bring his body into Court that it may be seen whether he is legally held. It is well called the great bulwark of personal liberty, since without it every individual may be liable to be kidnapped and dragged to prison in violation of law and right.

It will be noticed that the language of this clause is a *restriction* and not a grant of power—the writ of *habeas corpus* "*shall not be suspended*" except in cer-

tain cases named. But Mr. Lincoln, with a luminous exhibition of sagacity, contends that this negative restriction upon Congress is a positive grant of power to the President. He had hardly entered upon his duties when he ordered the suspension of the *habeas corpus* in violation of the order of the Supreme Court of the United States. Even his own Congress (we say *his* because it has proved itself to be in a conspiracy with him to subvert the Government of the United States,) admitted this act to be a violation of the Constitution, by passing a law designed to shield him from arrest and punishment. They passed a special act to give the President the power of suspending the writ, which is an acknowledgement that he has it not under the Constitution. But if he has it not under the Constitution, Congress cannot give it to him. Congress can give the President no new powers. Its own powers are only delegated. A delegated power is not transferable. Congress can no more delegate its powers to the President than the President can delegate his powers to Congress. Therefore the Congressional act to give Mr. Lincoln the right to suspend the *habeas corpus* is null and void.

3. No Bill of Attainder or ex post facto Law shall be passed.

NOTE.

A *bill of attainder* means a legislative act to convict a person of some capital crime. *Ex post facto* means

literally, *after the act is done*. An *ex post facto* law is an act to affect deeds that were done before the law was passed. Congress has no power to do either. It can neither convict a person of any crime, nor can it pass a law either to punish or to exculpate deeds that were done before the passage of said act. Therefore, the late acts of Congress designed to protect the President from arrest and punishment, for deeds done in violation of the laws of the land, are null and void. They are not only *ex post facto* in their character, but they are also, as we shall show in another place, violations of other portions of the organic law of the United States.

4. No Capitation, or other direct Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

5. No Tax or Duty shall be laid on Articles exported from any State.

6. No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

7. No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

NOTE.

All appropriations of the public money must be *made by law*, that is, according to the Constitution, or according to laws constitutionally enacted. In its appropriations of money, Congress is limited. It cannot lawfully spend money for purposes not provided for in the Constitution. For instance, it cannot appropriate money to build school-houses, meeting-houses, nor to pay the salaries of school-teachers and preachers. Nor can it appropriate money to purchase negroes, to build houses for negroes, or to teach negroes. If appropriations were made for such purposes, the people would be under no obligations to pay the taxes laid in consequence of such appropriations, because the States never delegated to Congress the right to tax the people for such things; and no money can be drawn from the treasury of the United States, but in consequence of appropriations made by Congress. Not even the soldiers of the United States army can be paid, unless Congress passes an act appropriating money for the purpose. The President cannot authorize the payment of a dollar out of the treasury for any purpose for which appropriation has not been made by Congress. Mr. Lincoln has somewhere, and somehow, spent during the last year, *ninety-eight millions* of dollars not appropriated by Congress. He now comes back and asks Congress to pass an act appropriating \$98,000,000 to meet the deficiency. What all this money has gone for, nobody knows, except those who have unlawfully spent it. Large sums we know must have been expended in providing for, and educating negroes, and

transporting soldiers home to vote ; all of which is an unlawful spending of the people's money. Congress has no power to appropriate money for such purposes, and the President has no right to draw money from the treasury not appropriated by Congress. All these things are, of course, an illegal spending of the people's money, and will, without doubt, some day be made an excuse for sweeping the whole away by a repudiation.

8. No Title of Nobility shall be granted by the United States : And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any Present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION 10.

1. No State shall enter into any Treaty, Alliance, or Confederation ; grant Letters of Marque and Reprisal ; coin Money ; emit Bills of Credit ; make any Thing but gold and silver Coin a Tender in Payment of Debts ; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

2. No State shall, without the consent of the

Congress, lay any Impost or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws ; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States ; and all such Laws shall be subject to the Revision and Control of the Congress.

3. No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of Delay.

NOTE.

The powers which the States promise not to exercise in this tenth section it will be seen are such as could not be retained by them without evident detriment to the "general welfare." The theory was to make the Federal Government the general agent of joint interests of the "several states." If any State might of its own motion make treaties, form alliances, lay duties on imports, &c., a condition of confusion and anarchy might soon follow ! For the "general welfare" all this business was confided to the general government, as the agent for the whole. It is the nature of an agreement between the States, that they

should permit the general government to exercise, in certain specified matters, their independent sovereign powers. The States gave up, surrendered no powers, but delegated the *exercise* of these powers to the Federal Government, which received them, to be exercised only for the "General welfare."

POWERS OF THE PRESIDENT.

ARTICLE II.

SECTION 1.

1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows :

2. Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office

of Trust or Profit under the United States, shall be appointed an Elector.

NOTE.

By this last clause it is seen that the office of President represents the sovereignty of the States. The President is not elected by the people at large—nor is he the President of the people at large, as one consolidated body, or *nation*—there is no such body politic known to the Constitution—but he is the President of States—sovereign, United States. *States*, not the people at large, elect him. If the people at large elected, Mr. Lincoln would not be President, for there was a majority of the whole people, of a million of votes against; but a majority of States was for him. So completely does the Federal Executive represent the sovereignty of States, that if a majority of the States should refuse to choose Presidential electors, not only would there be no President, but the Federal Government itself would be at an end. There is no power to compel the States to choose electors. Thus, if a majority of States so please, they can bring the Federal Government to a termination by this simple means. This may seem strange; but it is a necessary condition of our system, which is a voluntary union of sovereign States. It is a condition of sovereign bodies that they cannot be coerced. The States never delegated to the Federal Government the right to coerce them. So far from that, they reserved to themselves powers that, if they choose to exercise them, would, at the expira-

tion of every four years, leave the Federal Government to perish for the want of an executive head.

[*The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each ; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be the majority of the whole number of electors appointed ; and if there be more than one who have such majority and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President ; and if no person have a majority, then from the five highest on the list, the said house shall in like manner choose the President. But in choosing the President, the votes shall be taken by states, the representation from each State having one vote ; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the vice-President.]

3. The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes ; which Day shall be the same throughout the United States.

4. No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligi-

*This clause within brackets has been superceded and annulled by the 12th amendment, on page 462.

ble to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years Resident within the United States.

5. In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

6. The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

7. Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—

“ I do solemnly swear (or affirm) that I will
“ faithfully execute the Office of President of the
“ United States, and will to the best of my
“ Ability, preserve, protect and defend the Con-
“ stitution of the United States.”

NOTE.

The whole of this second article of the Constitution is devoted to the powers and duties of the President. This first duty is to take a solemn oath to “preserve, protect, and defend the Constitution of the United States. The Constitution is to be his guide in every act. It is his duty to see that the laws are faithfully executed. It is the business of Congress to make the laws, and of the President to execute every law Congress has under the Constitution the right to enact. But, if the President should mistake the construction of an act of Congress, and should give orders not warranted by the law, any aggrieved party might recover damages against the officer acting under those instructions. [See 2d Cranch’s Reports 563.] There are three ways in which a President might violate his oath of office: 1. By refusing to execute the laws and treaties of the United States; 2. By usurping a power not confided to him in the Constitution: 3. By an arbitrary and corrupt use of authority, lawful in itself, but employed by him for selfish purposes and illegal aims. In other places we shall show that President Lincoln has repeatedly broken his oath of office in all these particulars.

SECTION 2.

1. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

NOTE.

Let it be noticed that the President is Commander-in-Chief only of those who are in the army and navy, or in the militia when *in actual service*. He is not the Commander-in-Chief of any civilian. This Constitution gives him no power over a citizen civilian in time of war that he has not in time of peace. In this country the military power is always, at all times, in all places, subordinate to the civil authority. The Constitution of New York declares that "No authority shall, *on any pretence whatever*, be exercised over the people of this State, but such as shall be derived from and granted by them."

The Constitution of New Jersey says:—"The military shall be in strict subordination to the civil power."

The Constitution of Pennsylvania says : “The military shall, *in all cases and at all times*, be in strict subordination to the civil power.” The Constitution of every State in the Union is similar. The idea of a *war power* that is above the powers of ordinary legislation—that is able to revoke or suspend existing constitutional law—is not only foreign to the genius of our government, but is positively denied by express constitutional enactment.

The Constitution gives the President no right to suspend the Constitution and laws of the States under the plea of a “War Power.” No such power is imparted to the President in the Constitution. It is the duty of the Executive of every State to protect the Constitution and laws of his State from the lawless deeds of a President who attempts to make the civil authority subordinate to the military power. If such a President could be caught within the jurisdiction of a State so outraged, it would be within the lawful powers of the State to arrest and try him for his life.

In 1833, while discussing the proposition to march a military force against the State of South Carolina, Daniel Webster said :

“Sir, for one I protest in advance against such remedies as I have heard hinted. The administration itself keeps a profound silence, but its friends have spoken for it. We are told, sir, that the President will immediately employ the military force, and at once blockade Charleston ! A military remedy—a remedy by direct military operation, has thus been suggested, and nothing else has been suggested, as the intended means of preserving the Union. Sir, there is no little reason to think that this suggestion is true. We cannot be altogether unmindful of the past, and therefore we cannot be altogether unapprehensive for the future. For one, I raise my voice beforehand against the unauthorized employment of military pow-

er—against superseding the authority of the laws by an armed force, under pretence of putting down nullification. The President has no authority to blockade Charleston. The President has no authority to employ military force, till he shall be duly required so to do by law, and by the civil authorities. His duty is to cause the laws to be executed. His duty is to support the civil authority. His duty is, if the laws be resisted, to employ the military force of the country, if necessary, for their support and execution ; but to do this only in compliance with law, and with decisions of the tribunals. With a constitutional and efficient head of the Government—with an administration really and truly in favor of the Constitution, the country can grapple with nullification. By the force of reason ; by the progress of enlightened opinion ; by the natural, genuine patriotism of the country, and by the steady and well sustained operations of law, the progress of disorganization may be successfully checked, and the Union maintained.”

Mr. Seward, in his letter of instructions to Mr. Adams, at the Court of St. James, dated Washington, April 10th, 1861, has put this main point in language, even stronger than the above from Daniel Webster :

“He (the President) believes, nevertheless, that the citizens of those States, as well as the citizens of the other States, are too intelligent, considerate and wise to follow the leaders to that disastrous end (secession). For these reasons, he would not be disposed to reject a cardinal dogma of theirs, namely, that the Federal Government could not reduce the seceding States to obedience by conquest, even though he were disposed to question that proposition. But, in fact, the President willingly accepts it as true. Only an imperial or despotic Government could subjugate thoroughly disaffected and insurrectionary members of the State. This Federal Republic system of ours is, of all forms of Government, the very one which is most unfitted for such a labor. Happily, however, this is only an imaginary defect. The system has within itself adequate, peaceful, conservative and recuperative forces. Firmness on the part of the Government in maintaining and preserving the public institutions and property, and in executing the laws, where authority can be exercised without waging war, combined with such measures of justice, moderation and forbearance as will disarm reasoning opposition, will be sufficient to secure the public safety,

until returning reflection, concurring with the fearful experience of social evils, the inevitable fruits of faction, shall bring the recusant members cheerfully back into the family which, after all, must prove their best and happiest, as it undeniably is their most natural home. The Constitution of the United States provides for that return by authorizing Congress, on application to be made by a certain majority of the States, to assemble a national convention, in which the organic law can, if it be needful, be revised, so as to remove all real obstacles to a reunion, so suitable to the habits of the people, and so eminently conducive to the common safety and welfare.

Keeping that remedy steadily in view, the President, on the one hand, will not suffer the Federal authority to fall into abeyance, nor will he, on the other, aggravate existing evils by attempts at coercion, which must assume the form of direct war against any of the revolutionary States."

Mr. Seward's instructions to Mr. Judd, Minister to Prussia, Dated Washington, March 22d, 1861, are if possible still clearer and more emphatic on this point.

"You are well aware of what you will find Europeans unable to understand, namely: that owing to the very peculiar structure of our Government, and the equally singular character and habits of the American people, this Government not only *wisely* but necessarily hesitates to resort to coercion and compulsion to secure a return of the disaffected portion of the people to their customary allegiance. *The Union was formed upon popular consent, and must always practically stand on the same basis.*"

2. He shall have Power by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court,

and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

NOTE.

Thus does the Constitution prudently fence the Executive round with the ever jealous sovereignty of the States. The Senate, which is the immediate representative of State sovereignty, has an effectual check upon all the appointments of the President, whether civil or military. In fact, he can do nothing except "by and with the advice and consent of the Senate." Only by recreancy of the Senate to the States whose servants they are, can the President take the first step of usurpation. At the present time the Senate and the President, together with a majority of the lower House of Congress, are in a conspiracy against their sovereign masters the States. They have assumed or usurped powers which are, not only incompatible with a republican form of government, but absolutely destructive of it.

3. The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION 3.

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the officers of the United States.

SECTION 4.

The President, vice-president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

NOTE.

It is the President's duty to *"take care that the laws*

are faithfully executed. Chief Justice Story in his Commentary on the Constitution says of this clause :

“But we are not to understand, that this clause confers on the President a new and substantial power to cause the laws to be faithfully executed, by any means, which he shall see fit to adopt, although not prescribed by the Constitution, or by the acts of Congress. That would be to clothe him with an absolute despotic power over the lives, the property, and the rights of the whole people. A tyrannical President might under a pretence of this sort, punish for a crime, without any trial by jury, or usurp the functions of other departments of the Government. The true interpretation of the clause is that, the President is to use all such means as the Constitution and laws have placed at his disposal, to enforce the due execution of the laws. As for example, if crimes are committed, he is to direct a prosecution by the power of the public officers, and see that the offenders are brought to justice. But he cannot employ the public force or make war to accomplish the purpose.”

This language of Judge Story, himself a federalist, and one of the most eminent Jurists of the United States, admits of no double construction. It is the President's duty to execute the laws, but he must not employ unconstitutional or illegal means to do it. He should exhaust all the powers given him in the Constitution, and there his duty ends. If he goes beyond he is himself a transgressor, and may, and ought to be punished. Mr. Lincoln takes the ground that he found the Constitution unequal to the “*exigencies of the hour.*” Even if that were so, it is not his business to usurp powers not given by the organic law of the land. He is to administer the *laws*. It is very true that he finds in the Constitution no means for coercing the *States* of this Union by the military arm. The reason is, not that the framers of that instrument made a mistake, but that the power of

military coercion against *States* was purposely withheld from the Federal Government. The matter was fully discussed in Convention and it was unanimously determined that the Federal Government should not be entrusted with the power of *State coercion*. Had such a power been given not a single State would ever have ratified the Constitution. Even Alexander Hamilton, in the Constitutional convention said :

“But how can this force be exerted on the States collectively against State authority? It is impossible. It amounts to a war between the parties. Foreign powers, also, will not be idle spectators. They will interpose, the confusion will increase, and a dissolution of the Union will ensue.”

THE JUDICIARY.

ARTICLE III.

SECTION 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall,

at stated times, receive for their Services, a Compensation, which shall not be diminished during their continuance in office.

SECTION 2.

1. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority ;—to all Cases affecting Ambassadors, other public Ministers, and Consuls ;—to all Cases of admiralty and maritime Jurisdiction ;—to Controversies to which the United States shall be a Party ;—to Controversies between two or more States ;—between a State and Citizens of another State ;—between Citizens of different States ;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

2. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court

shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

3. The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury ; and such Trial shall be held in the State where the said Crimes shall have been committed ; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

NOTE.

By a reference to Article II section 2d, it will be seen that the Judges of the Supreme Court are appointed by the President, "*by the advice and with the consent of the Senate.*" So the Supreme Court represents the sovereign States through their agents of the Senate. All the three co-ordinate branches of the Federal Government, viz the Executive, the Legislative, and the Judicial, are thus the immediate representatives of the *Sovereignty* of the "several States."

The trial of all crimes it is said in this Article *shall be by Jury*. In his Commentary on this clause, Judge Story says :—

"It is observable, that the trial of all crimes is not only to be by jury, but to be held in a State, where they are committed. The object of this clause is, to secure the party accused from being dragged to a trial in some distant State, far away from his friends, and witnesses, and neighborhood ; and thus submitted to a verdict

of mere strangers, who may feel no common sympathy, or who may even cherish animosities, or prejudices, against him. * * By the common law, the trial of all crimes is required to be in the County where they are committed."

The administration has repeatedly violated this clause of the Constitution in several particulars. It has seized citizens contrary to law, and sent them out of their States and district, and there tried them, not by juries but by commissions of its own creation. Administrationists have pleaded necessity for these deeds. But the Constitution allows no necessity above its own laws. It is the supreme law. It declares that, "the trial of ALL crimes shall be by jury." There is no exception. This rule in England is as old as *Magna Charta*, which declares that "no man shall be arrested, nor imprisoned, nor banished, &c., but by the judgment of his peers, or by the law of the land." For attempting to violate this great palladium of liberty, kings have lost their heads, and justly. No occupant of the British throne for the last five hundred years could have made such sweeping inroads upon the laws of the land, as the administration has upon the Constitution of our country, without losing his throne and his head together.

of the Sovereignty of the "several

SECTION 3.

In his Commentary on this clause, Judge

1. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of

Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

2. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

NOTE.

The meaning of "Treason" is here placed beyond dispute—it consists in "*levying war*," &c. ; or in giving aid and comfort to those who do levy war upon the United States. *To give aid and comfort*, is to assist the enemy with the means of levying war. A man's *opinions* or *sympathies* are a great ways outside of treason. He may believe his government to be carrying on an unjust war, and his *sympathies* may even be with those with whom his country is carrying on a war, without being a traitor. The law does not punish *opinions* and *sympathies* as crimes. In our last war with England the entire "Federal" party sympathized with the enemy. Ministers preached against the war as "unholy and damnable"—statesmen denounced not only the war, but every separate measure of the administration which was carrying it on. But all this was not treason—was not giving aid and comfort to the enemy, within the meaning of the law. The same is true in our war with Mexico. Mr. Lincoln, then a member of Congress, denounced it on the floor of the House, and made a speech designed

to stop all supplies for the army. One member, (our present minister to Mexico,) in a speech on the floor of Congress, prayed to God that the enemy might "welcome our soldiers with bloody hands to hospitable graves." While the democrats were illuminating all our cities to celebrate the victories achieved by our soldiers, the Whigs closed their doors, shut their houses in darkness, and retired in sullen silence from the loud acclaim, to show their detestation of the war. But all this was not *treason*—was not levying war, nor giving aid and comfort to the enemy within the meaning of the Constitution. So with the present war—a man has a right to his opinions and his sympathies. He may believe the war to be violative of the Constitution, to be an act of cruel and bloody despotism, to be carried on for an unholy and damnable purpose—nay, he may believe that the cause of the Union and of liberty demands that it should utterly fail, and be no traitor; but, on the other hand, be a true patriot. No man has a right to punish him for his *sympathies* with those who are fighting to defend their altars and their homes. He may be mistaken in his opinions, and be misguided in the exercise of his *sympathies*—but wrong opinions and misguided sympathies are not crimes within the meaning of the laws.

The above section declares that no man shall be convicted of treason unless on the testimony of two witnesses, or on an open confession. And also that "no treason shall work corruption of blood or forfeiture, except during the life of the person attainted." Both of these provisions have been violated in innumerable instances, by the present administration.

It has pronounced men guilty of treason, by order and proclamation, without witnesses and without trial; and has declared their property confiscated for all time, and under such order has proceeded to sell and deed away said property. Of course the parties holding this property have no valid title to it whatever. If the Constitution and laws should survive this destructive revolution, all the holders of property, thus illegally obtained, will be dispossessed and severely punished. In the eye of the law the holders have no more just claim to the property from the title given by Mr. Lincoln, or by his Congress, than they would if they had received it in fee simple from a banditti. Such is the organic law of the land. Neither the President nor Congress, nor any other authority can alter it. An act of Congress which violates the Constitution is not a *law*. All parties engaged in executing an unconstitutional law, are liable to punishment.

MISCELLANEOUS.

ARTICLE IV.

SECTION 1.

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial

Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION 2.

1. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

2. A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

3. No Person held to Service or Labor in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labor, but shall be delivered up on Claim of the Party to whom such Service or Labor may be due.

NOTE.

The fugitive from justice and the fugitive from labor

are put upon the same footing. They are both to be given up "*on claim*;" that is, on the identity of the absconding parties being proved. The process is summary, and not a trial by jury. For the benefit of fugitive negro slaves, a majority of the Northern States have passed laws to prevent this summary process. But they have never passed any such laws for the benefit of absconding white men. All such acts are, however, plainly unconstitutional, for according to the Constitution, the process is *on claim*, or summary. In relation to the fugitive from labor clause, Judge Story says: "This clause was introduced into the Constitution, solely for the benefit of the slaveholding States, to enable them to reclaim their fugitive slaves, who should escape into other States, where slavery is not tolerated." In 1793, Congress passed a special act to give efficiency to this fugitive slave clause of the Constitution. This bill was signed by Washington, and known as the "*first fugitive-slave law*." Another fugitive-slave law was passed in 1850. Soon after the passage of this last fugitive-slave law, a large majority of the Northern States passed acts nullifying not only both of these acts of Congress, but this fugitive-slave clause of the Constitution as well. Indeed, with the exception of New Jersey and Illinois, we think every Northern State has been guilty of this *nullification*. There was, some years ago, a fearful excitement in the North, when South Carolina *nullified* a single act of Congress, on the alleged ground of its unconstitutionality. But the Northern States have nullified *two* acts of Congress, and a clause of the Constitution besides. In most of the Northern States, these acts of

Congress were resisted by combinations of armed men, and in many instances blood was shed. All this time the South was earnestly pleading with the North to respect the Constitution and obey the laws. The North answered her with jeers, defiance and threats. Societies were formed in every Northern city, for the purpose of stealing the property of the Southern States, and of resisting, with force of arms, the enforcement of the Constitution and the laws in relation to slavery. This warfare did the North carry on against the property and Constitutional rights of the South for a third of a century, before the South was driven into the desperate steps of secession.

SECTION 3.

1. New States may be admitted by the Congress into this Union ; but no new State shall be formed or erected within the Jurisdiction of any other State ; nor any State be formed by the Junction of two or more States ; or parts of States, without the Consent of the Legislature of the States concerned as well as the Congress.

NOTE.

Mr. Lincoln's Proclamation of Amnesty, which says that *one tenth* of the number of inhabitants of States, may organize new State Governments, is a criminal violation of this clause of the Constitution. And

what makes it still worse, if degrees of crime can be applied to such a monstrous wrong, is the fact that the *one tenth* may not be citizens of the States to be so re-organized—they may all be the creatures of the President, camp followers, or parasites from the North. The *one tenth* is to be *counted* by the officers in the army. Another violation of this clause is the act of Congress creating a new State out of the territory of the State of Virginia. Mr. Stevens of Pennsylvania declared that he “was not going to stultify himself by claiming that this act is Constitutional. We know that it was not Constitutional, but it is necessary.”

2. The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory of other Property belonging to the United States ; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION 4.

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion ; and on Application of the Legisla-

ture, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

NOTE.

By the last clause of the third Section of this Article, it is declared that the power of Congress over the territories of the United States shall not be construed to the prejudice of any particular State. The South has contended that, under this clause of the Constitution, Congress has no power to pass a law excluding the property rights of any of the States from the territories belonging to the United States ; and that therefore slavery could not be excluded by act of Congress. The South furthermore claims that, as, by the old French law, slavery existed in all the territories of the Louisiana purchase, and as such laws were never repealed, slavery already exists there, and must be of binding effect until repealed by the sovereign acts of States formed out of said territory. On this subject the Constitution and the law are evidently with the claim of the South. Such has always been the doctrine of the supreme court and the democratic party. The idea that Congress has a right to banish the property institutions of the Southern States, from the common territory of the United States is of a very modern date, and is clearly in opposition to the Constitution.

In this fourth Section it is declared that the Federal Government shall guarantee every State a Republican form of government. Mr. Lincoln and his party have disregarded this clause in even

every Northern State. Almost every attribute of a republican form of government have they swept away, and to the shame of the people of these States have they submitted to a despotism more insulting than the tyranny that has made Austria and Turkey by-words among the free peoples of the earth.

ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other mode of Ratification may be proposed by the Congress ; Provided that no Amendment which may be made prior to the Year one thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article ; and that no State, without its consent, shall be deprived of its equal Suffrage in the Senate.

NOTE.

Two thirds of the *States*, not two thirds of the *peo-*

ple, can call a convention. And so three quarters of the *States*, not three quarters of the *people*, can alter the Constitution. This is a further proof of the absolute sovereignty of the States. The power to alter or abolish is in their hands as sovereign bodies, and not in the hands of the people at large. The people at large, as consolidated in a national Government, are no where recognized in this Constitution. There is no such body politic known to this Constitution as *The National Government*. As shown in another place, when a resolution was offered in the Constitutional Convention, that "a national Government ought to be formed," it was rejected, and a resolution passed, to form a government of "*the United States*." Ours is a government of Confederate States, of States united voluntarily, for the benefit of the *States*, and for no other purpose. The States which made this Union, can unmake it, and form another, or remain apart as they were previous to the first Confederation, according to the form of proceeding provided for in this Fifth Article of the Constitution. A Convention so called, would possess all the powers of the original Convention that formed the Constitution. Many have earnestly urged the propriety of calling such a convention to settle our unhappy difficulties. Both the President and Congress have usurped the powers which belong alone to such a Convention. The issues which fanaticism have forced upon the country, are beyond the lawful reach of the Executive and Congress. They concern the organic character of the Union, and can only be properly dealt with by the original and undelegated powers of the States. Why has the Administration

so bitterly and so spitefully rejected every proposition for the convention provided for in this article of the Constitution? Do they fear that such a convention would devise some plan to stop this horrible shedding of blood, and restore the Union to the exact basis on which it was originally formed? The malice with which they pursue the advocates of a Constitutional Convention, is proof that they dare not submit the issues to the just and lawful authority of the States so assembled in general convention, as provided for in this article.

SUPREMACY OF THE CONSTITUTION.

ARTICLE VI.

1. All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall

be made, under the authority of the United States, shall be the supreme Law of the Land ; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution ; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

NOTE.

The Constitution and all laws made in pursuance thereof shall be the Supreme law of the land ; that is, they are supreme within their limits.

The Constitution is the paramount law of the land ; and cannot be altered by Congress, by the Executive, nor by the Supreme Court, nor by any other power, except that of the States which made it. In this sense it is supreme—to be obeyed by all. Congress, the Supreme Court, and the President, derive all their powers from the *grant* of the States contained in the Constitution. An act of Congress not done in pursuance of or in agreement with the Constitution is null. [See 3. Dallas Report 399.] For the same

reason all orders or proclamations by the President not authorized by the Constitution are binding upon nobody. The *original* jurisdiction of the Supreme Court can be neither abridged nor enlarged by an act of Congress, nor by any order from the President, because the Constitution is the supreme law. Neither can the Constitution or laws of any of the States be so altered as to conflict with the powers which the States themselves "delegated" or "granted" in the Federal Constitution, for the "general welfare." The States have delegated the exercise of certain powers to the Federal Government, to be used for the general welfare of all the States, and by this instrument or grant they bind themselves to take no steps individually to exercise the powers which they have commissioned the Federal Government to employ for the benefit of the whole. It is precisely of the nature of a compact between a number of individuals who go into business together, and for the common interest of the firm they appoint a general agent, with full powers to act in certain specified matters for the firm, each agreeing not to act in those specified matters except through the said general agent. Such is the nature of this clause of the Constitution in which the States bound themselves not to pass laws conflicting with the powers which they mutually confided to the Federal Government in the Constitution.

OF RATIFICATION.

ARTICLE VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous consent of the States present the Seventeenth Day of September, in the year of our Lord one thousand seven hundred and Eighty-seven and of the Independence of the United States of America the Twelfth. In Witness whereof We have hereunto subscribed our Names

GEORGE WASHINGTON,
President, and deputy from Virginia.

NEW HAMPSHIRE.

JOHN LANGDON, NICHOLAS GILMAN.

MASSACHUSETTS.

NATHANIEL GORHAM, RUFUS KING.

CONNECTICUT.

WM. SAML. JOHNSON, ROGER SHERMAN.

NEW YORK.

ALEXANDER HAMILTON.

NEW JERSEY.

WIL. LIVINGSTON, DAVID BREARLEY,
WM. PATERSON, J. DAYTON.

PENNSYLVANIA.

B. FRANKLIN, THOMAS MIFFLIN,
ROBERT MORRIS, GEORGE CLYMER,
THOMAS FITZSIMONS, JARED INGERSOLL,
JAMES WILSON, GOUVERNEUR MORRIS.

DELAWARE.

GEORGE READ, GUNNING BEDFORD, JR.,
JOHN DICKINSON, RICHARD BASSETT,
JACOB BROOM.

MARYLAND.

[IFER,

JAMES M'HENRY, DAN. OF ST. THOS. JEN-
DANIEL CARROL.

VIRGINIA.

J. BLAIR, JAMES MADISON, JR.

NORTH CAROLINA.

WILLIAM BLOUNT, RICH'D DOBBS SPAIGHT,
HUGH WILLIAMSON.

SOUTH CAROLINA.

JOHN RUTLEDGE, CHARLES C. PINCKNEY,
CHARLES PINCKNEY, PIERCE BUTLER.

GEORGIA.

WILLIAM FEW, ABRAHAM BALDWIN,

Attest : WILLIAM JACKSON,
Secretary.

NOTE.

It was first resolved that "if seven States, whose votes in the first branch should amount to a majority of the representation in that branch, concur in the adoption of the system, it should be sufficient." This proposition met with a decided opposition from Luther Martin and others, on the ground that a minority of States could not be bound by the action of a majority in forming or disclosing a Constitution—"that, in originally forming a Constitution, it was necessary that every individual should agree to it, to become bound thereby; and that when once adopted, it could not be dissolved without the consent of every individual who was party to the original agreement." This line of remark was adopted by those who were really opposed to the new Constitution. The

Union of these States was first formed in 1778, by the adoption of Articles of Confederation between the thirteen Colonies. The 1st article of this Confederation declared, "The style of this Confederacy shall be, THE UNITED STATES OF AMERICA." And the closing paragraph of these articles sets forth that, "the articles thereof shall be *inviolably* observed by the States we respectively represent, and that *the Union shall be perpetual*." It lasted just ten years, when nine States seceded by adopting our present Constitution. In opposing this dissolution of the Union made under the articles of Confederation, Luther Martin said—"It is a part of the compact made and entered into, in the most solemn manner, that there should be no dissolution or alteration of the Federal Government, without the consent of every State, the members of and parties to, the original compact; that, therefore, no alteration could be made by a consent of a part of these States, which would either release the States so consenting from the obligation they are under to the other States, or which would in any manner become obligatory upon those States that should not ratify such alterations.' The decided stand taken by Mr. Martin and seconded by other powerful names, led to the adoption of the plan of this last article, that the ratification of the new Constitution by nine States should be sufficient for the formation of a new Union "between the States so ratifying the same." States refusing to ratify the new Constitution, were neither bound by it nor by any acts of the new Congress. They remained to all intents what they were before the Union was formed. It was a long time before North Carolina and Rhode

Island adopted the Constitution. Eleven States had seceded from the old Union and entered into a new compact. To this new Union, these two non-ratifying States were, in all particulars, as foreign countries, and were so regarded and so treated, until they adopted the new articles of compact. It was the *right* of sovereign States to accept or reject this Constitution. There was not a man then in the whole country who had the hardihood to declare that a minority of the States should be *coerced* into a Union with the majority. The Union was formed, as we have seen, upon the *voluntary basis*, and any attempt made to change it to an *involuntary basis*, would tend to subvert and destroy, not only the *form*, but also the *principles* of government established by our fathers. It would be a war upon liberty. A war upon the sacred principle of self-government.

AMENDMENTS.

TO THE CONSTITUTION OF THE UNITED STATES, RATIFIED ACCORDING TO THE PROVISIONS OF THE FIFTH ARTICLE OF THE FOREGOING CONSTITUTION.

ARTICLE I.

Congress shall make no law respecting an es-

tablishment of religion, or prohibiting the free exercise thereof ; or abridging the freedom of speech, or of the press ; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

NOTE.

The amendments to the Constitution may be regarded as partaking of the character of a Bill of Rights. The extreme jealousy of the people, who had just come out of a prolonged and bloody struggle for the establishment of their independence and freedom, made them hesitate to adopt the Constitution until they had every guarantee that it could never be construed to impart powers to the general government which might one day be turned against the States. When the Convention of Massachusetts ratified the Constitution, they suggested *nine* amendments to it, for the following reason :

“And it is the opinion of this convention, that certain amendments and alterations in the Constitution, *would remove the fears, and quiet the apprehensions of many of the good people of this commonwealth, and more effectually guard against any undue administration of the federal government,* the convention do therefore recommend, that the following alterations and provisions be introduced into the said Constitution.”

It was to *guard against the undue administration of the federal government* that the amendments were recommended. Among these recommendations was the one embraced in Article tenth of these amend-

ments. All the States evinced the same solicitude in relation to the danger of the federal government attempting to exercise powers not granted in the Constitution.

The perfect right of self-government, or of *State Government* was a great and absorbing object with those who framed and with those who accepted the federal Constitution.

The first sentence, however, in the Article First of these amendments, forbidding Congress to make any law respecting religion, gave much offence to a very great number of the clergy. They declared that this Article "voted God out of the Constitution."

The freedom of speech and of the press guaranteed in this Article is a right so sacred that none but the most desperate or reckless of tyrants has dared to destroy it. To deny a man this freedom, is to attempt the subjugation of his mental life. None but a demoralized and debased people ever submitted to an abridgement of this right. In the old republics of Greece, thought and speech were always free. Words, were revenged only by words. It is for this reason that the literature of Greece is so full of force, nobility, and genius. And Greece gave these great lessons of freedom to the Roman Republic. The laws of Rome only restrained *deeds*. Writing and speaking were free, even for a long time after the Republic fell. Cæsar permitted the largest liberty of speaking and writing. Even his own soldiers sung the most revolting scandals about him up and down the lines of the army without punishment. His successor, Augustus, was equally tolerant of the utmost liberty of speaking and writing. Said he,

„Let us not punish *words* but *deeds*. Let all men's words be free." Even Tiberius declared: "in a free State, speech and thought, word and feeling must be free." Such was the character of the Roman people at that time, that their rulers were forced to yield gracefully this boon of free speech. None but a depraved people will long consent to the loss of this freedom. The freedom of the press in England has been in one way and another guarantied ever since the reign of William III. But it has often had to struggle hard against the arbitrary power of corrupt rulers. Since the election of Mr. Lincoln, the freedom of speech and of the press in this country has depended entirely upon the caprice of the President, or the whim or malice of his Secretaries, Provost Marshals, and Generals. There has been a total disregard and contempt of this Article of the Constitution. The excuses that have been made for the violation of the organic law of the land are precisely such as are always made by usurpers and tyrants for similar deeds. How unaccountably have the people submitted! It looks as though some foul fiend had bewitched the public. When the President threw away his oath of office, the people seem also to have thrown away their manhood. Congress has passed several acts designed to destroy the virtue of this Article. But as all acts of Congress done in violation of the Constitution are nul and void; these acts are not *laws*. The Constitution is the *supreme law*. To that let the people hold fast, and by that let them judge of the character and deserts of those in office. Men have been seized even in New York for having had a respectful petition to Congress found in their

possession. Public assemblies of peaceable and law abiding citizens have been dispersed in almost every State by the bayonets of soldiers, acting by the order of provost marshals, who receive the inspiration of their lawless deeds from the fountain head at Washington.

ARTICLE II.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed

NOTE.

In his comments on this Article, Chief Justice Story says—"One of the ordinary modes, by which tyrants accomplish their purposes, is, by disarming the people, and making it an offence to keep arms, and by substituting a regular army in the stead of the militia. The friends of a free government cannot be too watchful to overcome the dangerous tendency of the public mind to sacrifice, for the sake of mere private convenience, this powerful check upon the designs of ambitious men. * * The militia is the natural defence of a free country against sudden foreign invasions, domestic insurrections, and *domestic usurpations of power by rulers.*" The present administration has violated this article of the Constitution in every particular. It has, in a great many instances, disarmed the people by forcibly entering their houses and seizing their arms of every descrip-

tion. It has sent overwhelming numbers of United States soldiers into peaceable and law-abiding communities, to overawe the people, and render the militia ineffectual for the preservation of the peace and the protection of the citizens. In a word, it has substituted United States soldiery for the militia. It is said that there are at the present time (March 1864) over twenty thousand United States troops regularly stationed in the city of New York. The Governor, to his shame be it spoken, makes no protest against this invasion of the State on the part of the Federal Administration. The city of New York is virtually under military law. If the General commanding these troops does not plunge every citizen into a bastille, it is only because it does not suit his whim or caprice of the moment. The same power by which he seizes *one*, menaces the liberty of *all*. The presence of such a United States force uninvited by the State Executive, is a violation of both the Federal and State Constitutions, and ought not to be submitted to a single hour by the authorities of the State. The militia is the only military force the laws allow in a State, unless United States troops are sent there in response to the call of the Governor or Legislature of the State. Again, Congress has passed an act (the conscription) which tends to annihilate the State Militia to such an extent as to leave the States completely at the mercy of the Federal army. All these acts are revolutionary, and violative of the Constitution. This Second Article of the Amendments, is a restriction upon the powers of Congress, and which is contumaciously disregarded in the Act here referred to.

ARTICLE III.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

NOTE.

The idea, that in time of war soldiers may be used to violate the laws of the land is effectually answered by this Article. In a free country soldiers are never to be used except "in a manner prescribed by law," much less are they to be used to violate the organic laws of the land. This Article of the Constitution has been not only disregarded, but it has been violated by the Administration in a most cruel and despotic manner, in every one of the border States. Its violations in those States, is, as a principle just as bad as its violation in every State would be. The fate of one may be the fate of all. There are portions of the States of Missouri and Kentucky, where the property of law-abiding citizens has been entirely destroyed during this war. But it is said they were suspected of having sympathies with the South. If they had, it was not a crime by the laws of this country. And even if it had been a crime, soldiers are not the judges of the laws. They are to be employed only "in a manner prescribed by law." The law is paramount, and soldiers can be used only in its just and

faithful execution. The using of them for any other purpose, or in any other manner is a high crime on the part of all concerned in the transactions.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

NOTE.

By this Article, all *general* warrants for searching or seizing persons, property, or papers, without particularly describing the object of the process, and the person and plea to be searched, is made unconstitutional. The arbitrary and tyrannical use of *genera* warrants, was one of the complaints of our fathers against the government of Great Britain ; and it was their design in this Constitution, to secure themselves and their children for all time against such abuses of power. The provisions of this Article are : 1st, That no searches or seizures shall be made upon the people in consequence of mere rumor, or unfounded suspicions. 2d, That even where there are good and sufficient grounds to suspect either an accomplished

or an intended wrong, no search or seizure can be made without a *warrant*, definitely setting forth the parties and places to be searched. 3d, No warrant can be issued to seize a person or search a place, except on the oath or affirmation of parties *knowing* the existence of wrong. In all these particulars, the present Administration has violated this Article in many instances. Peaceable and unoffending citizens have been searched and seized without the oath and warrant here prescribed.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger ; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb ; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law ; nor shall private property be taken for public use, without just compensation.

NOTE.

The important guarantees of this Article are ; 1st.,

That no person who is not in the land or naval service, or in the militia in actual service *shall be held to answer for any crime "except on presentment or indictment of a Grand Jury."* Thus an order from Mr. Stanton, from Mr. Seward, or any other high official, to seize a man, who is not in the army or navy, is of no more binding effect than such an order would be from the poorest negro in the land. A party not in the military or naval service, is under no more obligations to respect such an order than if it came from the subterranean den of a bandit. Such is the law. Any party attempting to seize the person of another on such an order, or without the order of some civil court, is liable to be punished on the spot, in any manner which the assailed party believes to be necessary for his personal safety, and may afterwards be prosecuted both in a civil and criminal suit. 2. Every man is here guaranteed against the loss of liberty or property, *without due process of law.* This clause is a restriction not only upon the authorized administrators of the laws, but more especially upon Congress—forbidding them to entrust power over the liberties, property or lives of the citizens to military officers in command, and also forbidding them to confiscate the estates of individuals without the formality of trial *"by due process of law."* The object of the clause is to rescue a man from the loss of his property by unprincipled acts of legislation. The Confiscation bill, passed by the last Congress, is clearly a violation of this clause of the Constitution, since it confiscates property *"without due process, and without trial* in the civil courts according to the forms of law in such cases provided. Congress is here restrained from

passing all such acts. Property seized by this act is no more legally seized than if it were stolen by the soldiers for their own private benefit. It is plunder in either case.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation against him ; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

NOTE.

In this short Article there are not less than nine safeguards to the rights and personal security of the citizens. 1. In *all criminal* cases, the accused is guaranteed a *speedy trial*. 2. His trial is to be *public*. 3. It is to be an *impartial* jury. 4. The trial is to be in the *State and district* where the crime was committed. 5. This district shall be previously *ascertained by law*. 6. The accused is to be *informed of the accusation against him*. 8. He is to have process to *obtain witness in his favor*. 9 He is to have the *assistance of counsel in his defence*. Mr. Lincoln has, in

a great many instances, violated this Article of the Constitution in all these particulars. He has denied his victims a speedy trial, but has kept them incarcerated in vermin-infested dungeons for weary months, and even years, without any sort of trial, contrary to the Constitution.

He has, even when he consented to allow a trial, refused it to be public, but has conducted it in secret without allowing the accused to be present, contrary to the Constitution.

He has refused them trial by *impartial jury*, but has tried them by partial and irresponsible commissions, contrary to the Constitution.

He has dragged them away from their own State and district, far off into distant States, to imprison and try them, contrary to the Constitution.

He has refused to inform his victims of the nature of the accusation against them, but has maintained a vicious silence to all their entreaties to know what they were accused of, contrary to the Constitution.

He has refused to confront them with the witnesses against them, contrary to the Constitution.

He has refused all process to obtain witnesses in their favor, contrary to the Constitution.

He has refused to allow them counsel for their defence; but has caused orders to be read in his bastiles, to the effect that "if any prisoner attempted to obtain counsel, it would be regarded a cause for further detention."

If these things had been done in Austria or in Turkey, we should have thought them monstrous; but here, in this land of boasted freedom, they are abominable beyond human imagination. Surely it is

not a wonder that those who have been guilty of these crimes, are opposed to "*the Constitution as it is*;" for, if that Constitution is not destroyed, the doom of the felon fixedly stares them in the face. There is not a district in the United States through which they can pass, without confronting victims to whom the law gives the right of arresting them by both criminal and civil process. This Constitution was made for the purpose of punishing all such violations of right and liberty.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States. than according to rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

NOTE.

No excessive fines nor cruel and unusual punishments are allowed by this Constitution. As it is not

stated what are *excessive fines and unusual punishments*, we must construe them to be such as would violate the general spirit and character of this Constitution, which was formed, among other things, for the protection of the weak from the unjust power of the strong. Even the criminal has her rights, and is not to be touched, except according to law. Excessive fines and unusual punishments are forbidden. For instance, if a man is guilty of the crime of theft, he can not be stript of all his property, and his family beggared and made wretched thereby. Or if he commits murder, the State can not take possession of all his property, and thereby drive his family to starvation or pauperism. If Congress were to pass an act to confiscate the property of every murderer, so as to deprive his family of the benefit of it, such act would be null, being unconstitutional. The property of a traitor can not be confiscated for a longer period than his own life. At his death it goes to his family or heirs, and any act of Congress to the contrary, would be null. Bail in every shape has been refused. Confiscation of all the property of the accused has taken place; and much cruelty has been practiced against political prisoners who have been immured in fortification prisons, away from home and kindred.

ARTICLE IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

NOTE.

Chief Justice Story says that, "The object of this clause is to get rid of a very common but perverse misapplication of a known maxim, that an affirmation of a power in particular cases, implies a negation of it in all other cases." This Ninth Article of the Amendments, is another proof of the extreme jealousy of the States that the Federal Government might, at the instance of a usurping President or a recreant Congress, sometime attempt the exercise of powers not granted in the Constitution. Our fathers supposed that they had, in these Amendments, rendered it impossible for the Federal Government to misunderstand its powers. And so they had. It is impossible to believe that the violations of the Constitution by this Administration are the result of misunderstanding; they come from a deliberate and settled determination to destroy the Constitution and subvert the sovereignty of the States. The position of the Administration is an *error*, it is a *crime*.

ARTICLE X.

The power not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

NOTE.

This Amendment simply follows out, or re-affirms

the object of the preceding. It fixes the rule by which the Constitution shall be interpreted. If, at any time, a doubt arises as to the powers of the Federal Government in any case, all that is necessary to determine the matter, is to recur to the Constitution and see if the subject matter was delegated to the Government of the United States, or not. For instance, the Federal Congress has passed a conscription act which puts the service and life of every citizen between certain ages, into the hands of the President without the consent of the State to which he belongs. Now, if we turn to the Constitution, we find that the States never delegated such a power to the Federal Government. Every man thus seized, is *kidnapped*, in the eye of the law, and if the courts and laws are ever restored to their old Constitutional foundations, they may arrest or prosecute all the parties concerned in their abduction. The President, and every Provost Marshal or other officer engaged in executing this act, are liable in damages to all the persons thus seized by them and dragged from their business and their homes. A power not delegated to the Federal Government in the Constitution, belongs to the States or the people ; and whoever attempts to enforce in the name of the Federal Government an undelegated power, is liable to punishment.

ARTICLE XI.

The Judicial power of the United States shall not be construed to extend to any suit in law or

equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

NOTE.

This article sets bounds to the Supreme Court of the United States. Commenting on this Article, Judge Upshur says—"It will be conceded on all hands that the Federal Courts have no jurisdiction except what is here conferred. The Judiciary, as a part of the Federal Government, derives its powers only from the Constitution which creates that Government." Hence it is evident that the Federal Courts have jurisdiction, only over such matters as were delegated to the Federal Government by the States ; over all other matters, the State Courts retain jurisdiction. Judge Upshur further says—"There is no part of the Constitution in which the framers of it have displayed a more jealous care of the rights of the States, than in the limitations of judicial power. It is remarkable that no power is conferred, except what is absolutely necessary to carry into effect the general design, and accomplish the general object of the States, as independent Confederated States. The federal tribunals cannot take cognizance of any case whatever, in which all the States have not an equal and common interest that a just and impartial decision shall be had." The rule is that the decisions of the Supreme Court of the United States, are final in all cases in which the subject matter was delegated to the Federal Government by the States ; and the

decisions of the supreme judicial authority of the States, are final over all cases in which the subject matter was retained by the States. For instance—this Congress has passed an act abolishing slavery in the States; but the Supreme Court cannot pronounce such an act constitutional, because it has no jurisdiction over the question, as the subject matter is not found among the delegated powers of Congress. In this matter the decisions of the State Courts are final, and it is competent for them to pass and execute sentence upon the President, and all parties engaged in the business of freeing slaves. The late act of Congress, removing certain cases from the State Courts to the Federal Courts, the same being cases in which the subject matter was never delegated to the Federal Government, is a gross violation of the Constitution, and every State judge who has acquiesced in such a proceeding, has rendered himself liable to impeachment by the legislature of his State. Such action on the part of the State judges, must be charged to *corruption*, because it must be evident to every judge that, as the original jurisdiction of the Federal Courts is fixed by the Constitution, it cannot be lessened nor enlarged by Congress.

ARTICLE XII.

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with them-

selves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate;—the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted;—the person having the greatest number of votes for President shall be the President, if such numbers be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a

majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

CONCLUDING REMARKS.

Whoever studies this Constitution candidly will be impressed with the enormity of the crimes of the present administration, not only in assuming powers not delegated, but even in extending and perverting those which were. It should be realized that the destruction of this Constitution, carries with it the destruction of the Union. There is no Union except as formed by the Constitution. Those who are not in favor of this Constitution just as it is, *in all particulars*, are opposed to the Union. The effort to enforce the abstract opinions of one section, against the Constitutional rights of the other is an act of disunion, inasmuch as it breaks the only bond of which the Union was formed.

INDEX

TO THE

Constitution of the United States.

ABBREVIATIONS USED IN THE REFERENCES.

Art.—Article. *Sec.*—Section. *Cl.*—Clause. *Amend.*—Amendment.
Pream.—Preamble.

A.

	PAGE.
Accounts, public, to be published. Art. I, Sec. 9, Cl. 7.....	39
Adjournment of Congress. Art. II, sec. 3,.....	53
Admiralty, jurisdiction. See Judicial Power.	
Admission of new States into the Union. Art. IV. sec. 3, cl. 1..	64
Ambassadors, appointment of. Art. II, sec. 2, cl. 2.....	51
receiving of. Art. II, sec. 3.....	53
protection and rights of. Art. III, sec. 2, cl. 1.....	56
suits by and against. Art. III, sec. 2, cl. 2.....	56
Amendments of Constitution. Art. V.....	67
Appellate jurisdiction. See Judicial Power.....	
Appointments to office by President and Senate. Art. II, sec. 2, cl. 2.....	51
in case of vacancies. Art. II, sec. 2, cl. 3.....	52
of representatives. Art. 1, sec. 2, cl. 3.....	10

II.

PAGE.

Appropriations of money. Art. I, Sec. 9, cl. 7.....	39
Arms, right to bear. Amend. Art. II.....	80
Army, power to raise and support. Art. I, sec. 8, cl. 12.....	29
Arrests of Members of Congress. Art. I, sec. 6, cl. 1.....	17
Arts and Sciences, promotion of. Art. I, sec. 8, cl. 8.....	28
Attainder, prohibition of, by Congress. Art. I, sec. 9, cl. 3.....	38
effects of, in treason. Art. III, sec. 3, cl. 2.....	59
Authors, copyright of. Art. I, sec. 8, cl. 8.....	28

B.

Bail, excessive, prohibited. Amend. Art. VIII.....	88
Bankruptcy, power of Congress over. Art. I, sec. 8, cl. 4.....	24
Bills of attainder, prohibition of. Art. —, sec. 10, cl. 1.....	41
Bills of credit. Art. I, sec. 10, cl. 1.....	41
Borrow money, power of Congress to. Art. I, sec. 8, cl. 3.....	23
Bribery, impeachment for. Art. II, sec. 4.....	53

C.

Capitation tax, power to lay. Art. I, sec. 9, cl. 4.....	39
Captures, regulation of. Art. I, sec. 8, cl. 11.....	29
Cases, what are within Judicial Power. Art. III, sec. 2, cl. 1....	56
Census, when taken. Art. 1, sec. 2, cl. 3.....	10
Cessions, for seat of government, &c. Art. I, sec. 8, cl. 17.....	34
Citizens of the States, &c. Art. IV, sec. 2, cl. 1.....	62
Citizens of the United States. Art. II, sec. 1, cl. 4.....	45
Coinage, power of Congress. Art. I, sec. 8, cl. 5.....	24
counterfeiting. Art. I, sec. 8, cl. 6.....	26
Commerce, power of Congress to regulate. Art. I, sec. 8, cl. 3,..	23
no power given to one State over another. Art. I, sec.	
9, cl. 6.....	39

III.

	PAGE
Common defence. Preamble.....	5
Common law suits. Amend. Art. VIII.....	88
Compensation for property taken for public use. Amend. Art. V.....	84
Congress of the United States. Art. I, sec. 1.....	9
shall assemble once a year. Art. I, sec. 4, cl. 2.....	16
legislative powers vested in. Art. 1, sec. 1.....	9
membership. Art. I, sec. 5, cl. 1.....	16
quorum in each House. Art. 1, sec. 5, cl. 1.....	9
adjournment. Art —, sec. 5, cl. 4.....	17
compensation for services, &c. Art. I, sec. 6, cl. 1.....	17
Constitution of the United States, purposes of. Pream.....	5
oath to support. Art. VI, cl. 3.....	70
Crimes, how presented and tried. Art. III, sec. 2, cl. 3.....	57

D.

Death, or removal from office of President. Art. II, sec. 1, cl. 5..	46
Debts, contracted before the adoption of Constitution. Art. VI, cl. 1.....	69
District of Columbia. Art. I, sec. 8, cl. 17.....	34
Domestic tranquility, to insure. Pream.....	5

E.

Election of President and Vice President. Amend. Art. XII...	93
Electors. Art. II, sec. 1, cl. 3.....	45
Art. II, sec. 1, cl. 2.....	43
Excessive bail prohibited. Amend. Art. VIII.....	83
Export duty, &c. Art. I, sec. 9, cl. 5.....	
Ex post facto law. Art. I, sec. 10, cl. 1.....	41

IV.

F.

PAGE

Freedom of speech and of the press. Amend. Art. I.....	77
Fugitives from justice. Article IV, sec. 2, cl. 2.....	62
Fugitive slaves. Art. IV, sec. 2, cl. 3.....	62

G.

Grand Jury. Amend. Art. V.....	84
--------------------------------	----

H.

Habeas Corpus. Art. I, sec. 9, cl. 2.....	37
House of Representatives. Art. 1, sec. 2, cl. 1,.....	9
choosing officers, &c. Art. I, sec. 2, cl. 5,.....	11
whom it represents. Note.....	10

I.

Impeachment. Art. I, sec. 2, cl. 5.....	11
trial of, in the Senate. Art. I, sec. 3, cl. 6.....	14
when President is tried. Art. I, sec. 3, cl. 6.....	14
who are liable to. Art. II, sec. 4.....	53
judgment in cases of limited. Art. 1, sec. 3, cl. 7.....	15
Indictments. Art. I, sec. 3, cl. 7.....	15
Inventors. Art. I, sec. 8, cl. 8.....	28
Imposts. Art. I, sec. 10, cl. 2.....	42

V.

J.

	PAGE.
Judges of the States. Art. VI, cl. 2.....	69
tenure of. Art. III, sec. 1, cl. 1.....	56
compensation of. Art. III, sec. 1, cl. 1.....	56
Judicial power of the U. S. Art. III, sec. 2, cl. 1.....	56
appellate jurisdiction. Art-III, sec. 2, cl. 2.....	
cannot apply to estate. Amend. Art. XI.....	21
Judge Upshur's comments. Note.....	92

L.

Legislative powers. Art. I, sec. 1.....	9
Liberty, the object of the Union. Pream.....	5

M.

Migration or importation. Art. I, sec. 9, cl. 1.....	36
Money. Art. 1, sec. 9, cl. 7.....	39
Militia. Amend. Art. II.....	8
Chief Justice Story on. Note.....	80
power of Congress over. Art. I, sec. 8, cl. 15.....	30
States to officer and train. Art. I, sec. 8, cl. 16.....	33
when lawfully used by the U. S. Note.....	30

N.

Naturalization. Art. I, sec. 8, cl. 4.....	24
Navy. Art. I, sec. 8, cl. 13.....	30
Nobility, no title of allowed. Art. I, sec. 9, cl. 8.....	41

VI.

O.

PAGE

Oath of the President. Art. II, sec. 1, cl. 7.....	41
to support the Constitution, by whom taken. Art. VI, cl. 3.	70
Officers of the U. S. not to receive presents. Art. I, sec. 9, cl. 8..	41

P.

People of the United States. The meaning of explained. Note...	6
Petition of right. Amend. Art. I.....	76
Powers, not delegated. Amend. Art. X.....	90
President, when commander-in-chief of the army, &c. Art. II, sec 2, cl. 1.....	43
President's powers. Art. II, sec. 2, cl. 2.....	51
Private property. Amend. Art. V.....,	84

Q.

Qualifications of representatives. Art. I, sec. 2, cl. 2.....	10
of a Senator. Art. I, sec. 3, cl. 3.....	14
of President. Art. II, sec. 1, cl. 4.....	45
of Vice-President. Amend. Art. XII.....	93
Quorum. Art. I, sec. 5, cl. 1.....	16

R.

Representatives and direct taxes. Art. I, sec. 2, cl. 3.....	10
Republican form of government guaranteed to every State. Art. IV, sec. 4.....	65
Religious tests not allowed. Art. VI, cl. 3.....	70
Ratification of the Constitution. Art. VII.....	72
Revenue bills. Art. I, sec. 7, cl. 1.....	13
Right of Petition. Amend. Art. I.....	76
Right of search and seizure. Amend. Art. IV.....	83
Right of trial by jury. Amend. Art. I.....	88
Rule of construction. Amend. Art. IX.....	89

VII.

S.

PAGE.

Senate, has sole power to try impeachment. Art. I, sec. 3, cl. 6.	14
Senators, how, and by whom chosen. Art. I, sec. 3, cl. 1.	12
temporary vacancies filled, Art. I, sec. 3, cl. 2.	14
Soldiers. Amend. Art. III.	82
States to be protected from invasion. Art. IV, sec. 4.	65
States, new admitted into the Union. Art. IV, sec. 3, cl. 1.	64
Supremacy of the constitution, &c. Art. VI, cl. 2.	69

T.

Taxes, power Congress to lay. Art. I, sec. 8, cl. 1.	21
how apportioned. Art. I, sec. 9, cl. 4.	39
Treason, definition of. Art. III, sec. 3, cl. 1.	58
punishment of. Art. III, sec. 3, cl. 2.	59
Treasury. Art. I, sec. 10, cl. 2.	42
money drawn from. Art. I, sec. 9, cl. 7.	39
Treaty-making power. Art. II, sec. 2, cl. 2.	51

U.

Union—why formed. Pream.	5
--------------------------	---

V.

Vacancies in the House. Art. I, sec. 2, cl. 4.	11
in the Senate. Art. I, sec. 3, cl. 2.	14
which President may fill. Art. II, sec. 2, cl. 3.	
in office of President, &c. Art. II, sec. 1, cl. 5.	46
Veto. Art. I, sec. 7, cl. 2.	20
Vice President ; how chosen. Amend. Art. XII, cl. 2.	24

VIII.

W.

	PAGE.
Witness, no person compelled to be against himself. Amend.	
Art. V.....	8
accused allowed. Amend. Art. V.....	86

Y.

Yeas and Nays to be entered on journal. Art, I, sec. 5, cl. 3.....	17
to be taken on all bills returned by President. Art. I, sec.	
7, cl. 2.....	20

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Involuntary Black Republican	Edwards vs. Lincoln.
Wrong Fig by the ear.	Metalic Ring.
Where does Old Abe Lincoln live?	A Grateful Post-Master.
Too Literal Obedience.	A Serious Joke.
How Uncle Abo felt.	Fix the date.
P. P. P.	A Rival to Uncle Abe.
Rattaned for a rat joke.	Uncle Abe's estimate of the Senate.
State House struck with Whiggery.	Must be good for something.
Graphic, but true.	Aptly said.
A Judge of the Post Office.	Linkums sold cheap.
I'm an Inderlid.	Uncle Abe as a pilot.
How Abe got his Sobriquet.	Uncle Abe's Valentino.
I'll take No. 11 too.	My Mary Ann.
A Severe Retort.	Uncle Abe's Honor.
Had all the Time there was.	Smoke that.
Could stand it for a Day or Two.	A sufficient Reason.
Not the worst of it.	Too Deep.
Accountred en Militaire.	Uncle Abe's first Speech.
Couldn't make a residential chair.	Uncle Abe's spelling.
Couldn't see it in that Light.	A soldiers theory of the War.
Too tough for the Rebels.	Nigger Mathematics.
Mac helped by an Illustration.	A Handy Faculty.
An Acre of Fight	Uncle Abe on time.
Uncle Abe vs. Oysters.	A story that has no reminder.
Egyptian Snake Story.	"Has it gin out."
Why Abe made a Brigadier.	Uncle Abe.
Uncle Abe puzzled.	Uncle Abe goes into Partnership.
Uncle Abe divided on a question.	A Dry Drop.
Tried for scaring the girls.	Uncle Abe as a Physiogomist.
Thank God for the Sassengers.	Concrete vs. Abstract.
Wasn't murder after all.	Uncle Abe passing counterfeit money.
Joe Reed's Mule hunt.	Abe when a boy.
Has no influence with the Admiustration.	A man of means.
A Touching Incident.	Uncle Abe School Superintendent.
A Lincoln Man Ducked.	Value of a Reputation.
A comparison.	Didn't like the name.
There's enough for all.	Take away the fowls.
Making a President.	Uncle Abe well fed.
Uncle Abe boss of the Cabinet.	Hit at Antietam.
Uncle Peter Cartwright's Wonder.	A Poor Crop.
Uncle Abe a Shaksperian.	Handy in case of emergencies.
The running sickness.	Value of a reputation.
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